since the detention in the prison would have become invalid from the date the orders were made. All the appellants relied on *PP* v *Koh Yoke Koon*.[1]

Under s 2(i) of the enactment, whenever it shall appear to the Minister on such written information and after such inquiry as he may deem necessary that there are reasonable grounds for believing that any person should be required to reside in any particular district or mukim, the Minister may issue an order for the arrest and detention of that person. Section 2(ii) of the enactment then provides that the Minister thereafter, after such further inquiry as he may deem necessary, may make another order (in Form C in the schedule to the enactment) that from a date to be stated in the order that person do reside in such district or mukim as may be specified in the order.

Section 3 of the enactment provides for the implementation of an order made under s 2(ii). For convenience the whole of s 3(i) and (ii) are reproduced below:

> (i) When any such order as is referred to in section 2 subsection (ii) or section 2A has been made with reference to any person, he shall be taken before the Officer-in-Charge of the prison in which he is detained and the Officer-in-Charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside.
>
> (ii) As soon as may be after action has been taken under subsection (i), the Officer-in-Charge shall hand over the person to whom the order relates together with a warrant of release in the Form in the Schedule to any Police Officer appointed by the Chief Police Officer to receive him, and the person shall thereupon be conveyed under police escort to the place wherein he states he wishes to reside and shall there be released.

It can immediately be observed that there is no time frame given in s 3(i) of the enactment. Since no time is prescribed, then, according to s 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision also found in s 54(2) of the Interpretation Act 1967), then anything which shall be done shall be done with all convenient speed.

There is, however, a time frame given by s 3(ii) of the enactment imposed by the words '*as soon as may be after action has been taken under subsection (i)*' appearing in that subsection. [Emphasis added.] The words 'as soon as may be' means as nearly as may be reasonable in the circumstances of the case. See also *Aminah* v *Superintendent of Prison, Pengkalan Chepa, Kelantan*.[2]

Whoever caused the delay must explain the delay; and it is for the court to decide whether the delay is reasonable under the circumstances.

The learned judge correctly distinguished *PP* v *Koh Yoke Koon*[1] since the appellants in this case were all under lawful detention prior to being served with the orders under s 2(ii) of the enactment. The orders of the Deputy Minister under s 2(i) of the enactment also carried the words 'sehingga tuan menerima perintah-perintah selanjutnya melalui saya' (until you receive further orders through me).

Since the various delays as explained by DSP Pow Kim Guan were administrative delays which were not unreasonable under the circumstances and accepted by the learned judge, we did not see how the appellants could succeed in their appeals.

We accordingly dismissed the appeals. After hearing arguments, we made no order as to costs here and below and ordered that the deposits should be refunded to the appellants.

Appeals dismissed.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Faridah bte Dato Talib v Mohamed Habibullah bin Mahmood

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 22-126-89
LIM BENG CHOON J
14 OCTOBER 1989

Civil Procedure — Jurisdiction of High Court — Domestic violence — Application by wife for injunction to restrain husband from assaulting, harassing and molesting her — Parties Muslims — Whether High Court had jurisdiction to adjudicate on action or whether Syariah Court had exclusive jurisdiction — Whether action could be instituted in view of prohibition of a wife suing her husband in tort — Married Women Ordinance 1957, s 9(2) — Selangor Administration of Islamic Law Enactment 1952, s 45(3) — Selangor Islamic Family Law Enactment 1984 — Courts of Judicature Act 1964, ss 4 & 23 — Federal Constitution, Ninth Schedule List I

Islamic Law — Husband and wife — Application by wife for injunction to restrain husband from assaulting, harassing or molesting her — Whether High Court or Syariah Court has jurisdiction to deal with the matter — Selangor Administration of Muslim Law Enactment 1952, s 45(3) — Selangor Islamic Family Law Enactment 1984 — Federal Constitution, Ninth Schedule List I

Family Law — Injunction to restrain husband from assaulting, harassing or molesting wife — Claim for damages — Whether action can be instituted — Prohibition of action in tort by wife against husband in respect of personal injuries — Married Women Ordinance 1957, s 9(2)

In this case the plaintiff brought an action to restrain her husband, the defendant, from, inter alia, assaulting, harassing or molesting her and members of her family. The defendant applied to strike out the plaintiff's writ and statement of claim under O 18 r 19(1) of the Rules of the High Court 1980. The parties were Muslims. At the hearing, the High Court was asked to decide on two issues, namely:

(a) whether the court had jurisdiction to adjudicate on the plaintiff's action since it involved a matter that fell exclusively within the jurisdiction of the Syariah Courts;
(b) whether the plaintiff could institute the action against the defendant when s 9(2) of the Married Women Ordinance 1957 prohibited a wife from suing her husband in tort.

Held, dismissing the defendant's applications:

(1) The action of the plaintiff is based on an actionable wrong which is both a civil and a criminal wrong. In all such cases of assault and battery, the civil and criminal remedies are not alternative but concurrent, each being independent of the other.

(2) It may be true that the actionable wrong complained of might well arise out of the marital relationship of the plaintiff and her defendant husband; nevertheless, that by itself cannot alter her cause of action. The security of a man's or a woman's person is the most elementary of civil rights and it is the court's duty in the exercise of its civil jurisdiction to prevent any attack against a person by violence inflicted or menaced.

(3) Since the plaintiff is seeking redress for an actionable wrong committed against her person, it cannot be said that the actionable wrong complained of falls exclusively within the jurisdiction of the Syariah Court when under the Federal Constitution the legislature of a state has no power to enact law relating to such matter.

(4) It is clear from the plaintiff's averments in her statement of claim that the plaintiff is pegging her cause of action on the wrongful acts of assault and battery said to have been committed by the defendant husband. It is the criminal offences alleged to have been perpetrated or threatened to be perpetrated against her that constitute the foundation of her cause of action.

(5) Section 9(2) of the Married Women Ordinance 1957 does not apply in this case as the plaintiff's action is grounded on criminal offences committed or threatened to be committed against her.

[*Editoral Note*: The defendant has appealed to the Supreme Court vide Civil Appeal No 02-441-89.]

Cases referred to

1 *Rediffusion (Hong Kong)* v *A-G of Hong Kong* [1970] AC 1136 (refd)
2 *Ali Mat bin Khamis* v *Jamaliah bte Kassim* [1974] 1 MLJ 18 (folld)
3 *Letang* v *Cooper* [1965] 1 QB 232 (refd)

Legislation referred to

Constitution (Amendment) Act 1988 s 8(c)
Courts of Judicature Act 1964 s 4, 23
Federal Constitution Ninth Schedule List I
Married Women Ordinance 1957 s 9(2)
Selangor Administration of Muslim Law Enactment 1952 s 45(3)
Selangor Islamic Family Law Enactment 1984
Supreme Court of Judicature Act 1964 ss 4, 23

Rubiah Jaffar for the plaintiff.
Kamar Ainiah Kamaruzaman for the defendant.

Cur Adv Vult

Lim Beng Choon J: The plaintiff in this action took out a writ endorsed with a concise statement of the reliefs required in the action on 13 February 1989. At the same time she also filed an ex parte summons-in-chambers (encl 3) praying for a temporary injunction to restrain the defendant, who is her husband, from, inter alia, assaulting, harassing or molesting her and members of her family. On 15 February 1989 when the ex parte summons came on for hearing, the defendant, who apparently was aware of the application made by his wife, also appeared at the said hearing. No order was made and the matter was postponed sine die as the defendant did give an oral undertaking not to assault, harass or molest the plaintiff. However on 12 April 1989 the solicitor for the plaintiff filed an affidavit (encl 7) complaining, inter alia, that the defendant continued to harass the plaintiff and requested the court to restore her application for hearing ex parte. The matter then came on for hearing on 14 April 1989 and this court granted the temporary injunction with liberty for the defendant to set it aside (encl 9).

On 21 April 1989 the plaintiff filed in her statement of claim. A notice of motion (encl 15) was filed by the defendant on 28 April 1989 to set aside the order of this court dated 14 April 1989 granting the temporary injunction. He also took out a summons-in-chambers on 12 May 1989 (encl 17) to strike out the plaintiff's writ and the statement of claim under O 18 r 19(1) of the Rules of the High Court 1980 ('RHC'). Both of his applications came on for hearing on 29 May 1989 but the hearing was adjourned as his counsel was sick. It was adjourned again on 19 June 1989 as plaintiff's counsel was engaged in a criminal trial. The matter finally came on for hearing on 30 August 1989.

At the hearing on 30 August 1989 this court was asked to decide on two issues, namely:

(1) whether this court had jurisdiction to adjudicate on the plaintiff's action since it involved a matter which fell exclusively within the jurisdiction of the Syariah Court; and
(2) whether the plaintiff could institute the present action against the defendant when s 9(2) of the Married Women Ordinance 1957 prohibited a wife from suing her husband in tort.

I do not propose to set out in detail the arguments of learned counsel for the defendant. Suffice it to say that the main premises of learned counsel's contention are that since the plaintiff's action arises out of the marital relationship between herself and her defendant husband, and that both the plaintiff and the defendant are Muslims, the matter in dispute falls exclusively within the jurisdiction of the Syariah Court and by virtue of the recent constitutional amendments brought about by s 8(c) of the Constitution (Amendment) Act 1988, this court therefore has no jurisdiction to adjudicate on the plaintiff's action. Alternatively learned counsel contended that as the plaintiff's action was pegged on the alleged tortious acts of the

defendant for which she was claiming damages, her action could not be maintained by reason of s 9(2) of the Married Women Ordinance 1957.

Counsel for the plaintiff on the other hand argued that the disputes before this court did not touch on matters relating to Islamic law on marriage, divorce, maintenance, guardianship and matters connected therewith. The plaintiff here was asking for an injunction to restrain her husband from assaulting, harassing and molesting her. She was therefore asking this court for protection against her husband's criminal acts of causing hurt.

In considering the constitutional issue, it is necessary to examine whether the action of the plaintiff falls within the jurisdiction of the Syariah Court. If it does, then by virtue of s 8(c) of the Constitution (Amendment) Act 1988, this court 'shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Court'. In this connection it is important to identify the cause of action of the plaintiff from the statement of claim (encl 11). A casual perusal of the said statement of claim is sufficient to convince me that her action is based on an actionable wrong of assault and battery which is both a civil and criminal wrong. Speaking generally, in all such cases of assault and battery, the civil and criminal remedies are not alternative but concurrent, each being independent of the other. The wrongdoer may be punished criminally by imprisonment or otherwise and also compelled in a civil action to make compensation or restitution to the injured person — see *Salmond on Torts* (13th Ed) p 9. I shall have more to say on this shortly. It may be true that the actionable wrong complained of might well arise out of the marital relationship of the plaintiff and her defendant husband; nevertheless, that by itself cannot, in my view, alter her cause of action. After all the security of a man's person or, as in the present case, the woman's person, is the most elementary of civil rights and surely it is this court's function in the exercise of its civil jurisdiction to prevent any attack against a woman's person by violence inflicted or menaced. In adopting this proposition, I have not overlooked the fact that the plaintiff has instituted divorce proceedings in the Syariah Court. The divorce action before the Syariah Court, however, cannot to my mind render her cause of action before this court which is pegged on the aforesaid actionable wrong defective, nor can the said divorce action prevent her from seeking an injunction from this court to prevent her personal safety from being violated. The very essence of this court's civil jurisdiction is to stop and prevent the commission of such an actionable wrong. It is important to remember that since lack of jurisdiction has the consequence that the court has no right to enter upon the inquiry as to whether there exists a state of facts which would entitle the court to grant to the plaintiff the relief sought, the defendant here can succeed only if it is shown that, no matter what the facts were that the plaintiff would be able to establish relating to the subject matter of the dispute, viz the battery, assault and harassment committed by the defendant, the court would still have no power to grant the relief of the kind sought against the defendant. Furthermore for purposes of answering the jurisdictional question, this court must assume that if the action were allowed to proceed, the plaintiff here would be able to establish that the act and conduct of the defendant as alleged in the statement of claim would be unlawful and would adversely affect the personal safety of the plaintiff — see *Rediffusion (Hong Kong)* v *A-G of Hong Kong*.[1] That being the case, I think it is surely untenable to suggest that this court has no jurisdiction to grant the reliefs sought by the plaintiff when her legal right to personal safety has been contemptibly violated.

The jurisdiction of this court to entertain the plaintiff's action is provided under s 23 of the Courts of Judicature Act 1964. Furthermore s 4 of that Act states:

> In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

It follows therefore that unless there are specific words in the Selangor Administration of Islamic Law Enactment 1952 or the Selangor Islamic Family Law Enactment of 1984 (these two Enactments were relied on by learned counsel for the defendant to support her contention about the jurisdiction of the Syariah Court) empowering the Syariah Court to deal exclusively with the dispute raised before this court and to grant the reliefs sought by the plaintiff in this action, I am not prepared to accede to the contention of the defendant's counsel — see *Ali Mat bin Khamis* v *Jamaliah bte Kassim*.[2] In this context, one may take note that it is stated under item 4 of List I of the Ninth Schedule of the Constitution that the civil and criminal law and procedure and the administration of justice including, among other things, actionable wrongs are matters in respect of which Parliament and not the legislature of a state may make law. Parliament is prevented from making laws only in respect of matters included in Islamic personal law relating to marriage, divorce, guardianship, maintenance, adoption, legitimacy, family law, gifts or succession testate and intestate — see para (ii) of item 4 of List I in the Ninth Schedule of the Constitution. This fortifies the proposition that since the plaintiff here is seeking for redress against an actionable wrong committed against her person, it cannot therefore be said that the actionable wrong complained of falls exclusively within the jurisdiction of the Syariah Court when the legislature of a state has no power to enact law relating to such matter. Furthermore, a cursory glance at the Selangor Administration of Muslim Law Enactment 1952 is sufficient to convince me that such an actionable wrong as pleaded by the plaintiff is not within the jurisdiction of the Syar-

iah Court — see s 45(3) of the Enactment. Likewise such an actionable wrong is also excluded from the Selangor Islamic Family Law Enactment 1984.

For the above reasons I have no hesitation, on the authority of *Ali Mat bin Khamis* v *Jamaliah bte Kassim*,[2] in holding that this court has jurisdiction to entertain the action of the plaintiff.

With regard to the second issue, namely, whether the plaintiff is precluded by s 9(2) of the Married Women Ordinance 1957 from instituting this action, it is to be noted that under the said section, a wife cannot sue her husband in tort save for the protection or security of her property. As stated earlier, even upon a cursory glance of the plaintiff's averments in her statement of claim, it is clear that the plaintiff is pegging her cause of action on the wrongful acts of assault and battery said to have been committed by the defendant husband. The alleged acts of battery are described by the plaintiff in her statement of claim as follows:

> 4 During the course of marriage between the plaintiff and the defendant, the defendant had battered the plaintiff on numerous occasions.
> 5 On 12 January 1989 the defendant continued to ill-treat the plaintiff by butting a lighted cigarette on the plaintiff's face.

As regards the acts of assault, she alleged that the defendant kept harassing her at her place of work and making threatening phone calls. She also avers in para 13 of her statement of claim that:

> The defendant threaten(s) and intends to harm the plaintiff and the plaintiff is living in a real state of fear and the plaintiff believe(s) or has reason to believe that the defendant will continue to threaten and injure the person unless restrained by this honourable court.

In view of these averments, it cannot be gainsaid that if they were true (and in considering the jurisdictional question, this court must assume that the plaintiff would be able to prove her allegations should the action proceed to trial — see the *Rediffusion (Hong Kong)* case[1]), the acts of battery and assault amount also to the criminal offences of causing hurt under s 352 of the Penal Code (FMS Cap 45) and criminal assault under s 323 of the said Code. A cause of action in modern law is after all merely a factional situation the existence of which enables the plaintiff to obtain a remedy from the court (see *Letang* v *Cooper*[3]) and he is not to head his statement of claim with a description of the branch of law on which he relies. In any case although judges may have a fairly clear practical notion of the contents of the law of tort, of contract and criminal law, they have never marked the exact boundaries of each of them and the sharp outlines of definition are alien to the common law. I therefore have no hesitation in holding that it is the criminal offences alleged to have been perpetrated or threatened to be perpetrated against her that constitute the foundation of her cause of action. Furthermore the plaintiff's request for an injunction to prevent future and threatened acts of like nature lends support to my conclusion. Whether the plaintiff is able to discharge the onus of proving the said criminal offences beyond a reasonable doubt is not a matter which the court is required to decide at this stage.

In arriving at the above conclusion, I have not overlooked that the plaintiff has also made a claim for 'damages and/or aggravated damages for costs of assault and battery committed by the defendant'. The framing of such a claim begs the question of whether the plaintiff is entitled to recover damages in respect of the commission of offences under the Penal Code (FMS Cap 45) against her. In this connection, I would like to refer to the following observations of CK Rao, the author of *Law of Damages and Compensation* (3rd Ed) at p 44 para 49:

> From what has been stated above, viz that every wrongful act gives rise to an action for damages, it is evident that the commission of an offence under the Indian Penal Code may give rise to a civil liability for damages against the offender in addition to the liability to prosecution in a criminal court. Every act which is an offence against the private rights of an individual can be the basis of a civil action for damages; in other words, every such offence is an actionable wrong and the injured person is not prevented from seeking civil redress despite the fact that no prosecution has been launched against the offender in the criminal courts of the land. This, in the main, constitutes the difference between the Indian and the English law. In England the distinction maintained between felony and misdemeanor is carried into the realms of civil law also and at one time it was thought that in order to prevent the compounding of felonies an action for damages for a wrong which would amount to a felony should not be maintained before the offender is criminally prosecuted. On this ground, it was held that where a servant sued her master for rape for which he had not been prosecuted in the criminal court, the action was not maintainable and the plaintiff was non-suited. The reason of such a rule is said to be that the private remedy must be suspended until public justice shall have been satisfied. In later cases, however, the rule itself and its application were much discussed, and considering the inconvenience that might frequently result from the application of the supposed rule, it was sought to be circumvented by holding that, on the principle embodied in the maxim nemo allegans suam turpitudinum est audiendus (ie no one alleging his own baseness ought to be heard), the defendant is not allowed to take advantage of the rule either by demurrer or by plea or in any other manner and that the court may in its discretion stay the action, till the prosecution of the offender in the criminal courts.

The author then went on to say at p 45 para 50:

> But in India it is a settled rule that an offender against the penal laws of the land may be sued for the wrongful act without in the first instance instituting criminal proceedings against him. In the first place it has been repeatedly held that no person is bound in law to proceed against a wrongdoer, in both the civil and criminal courts and if he does, it is a purely voluntary act on his part. In an early case, Sir Barnes Peacock CJ held the plaintiff in that case who sued for the value of a cow, proved to have been stolen from him, was not bound to institute criminal proceedings in the first instance, and that a civil action was maintainable.

The aforesaid observations are sufficient to answer the question posed by me earlier. Furthermore the principle embodied in the maxim 'ubi jus ibi remendium' strengthens my finding, for the plaintiff here must surely have a means to vindicate and maintain her personal safety and a remedy, if she is injured in the exercise and enjoyment of it.

For the above reasons, I hold that s 9(2) of the Married Women Ordinance 1957 does not apply as the plaintiff's action is grounded on criminal offences committed or threatened to be committed against her.

Application dismissed.

Solicitors: *Sheikh Shatar Cheah & Tan; Kamar Ainiah & Co.*

Reported by *Prof Ahmad Ibrahim*

Taharuddin bin Ahmad v Leo Moi & Anor

HIGH COURT (KUANTAN) — CIVIL SUIT NO 73 OF 1984
LAMIN J
12 SEPTEMBER 1989

Road Traffic — Accident — Material contradictions between police report and testimony in court — Failure to prove case

The plaintiff met with an accident in which his motor cycle collided with the motor car driven by the first defendant. Different versions of the accident were given by the parties at trial. According to the plaintiff, when he arrived at the junction, a motor lorry overtook him and made a turn to the left without any indication. He applied his brakes so that the lorry could pass, and after proceeding for some twenty to thirty feet, he saw two cars in a single file coming from the opposite direction. The rear car driven by the first defendant overtook the front car and encroached into the path of the plaintiff resulting in the accident. The first defendant alleged that he was following a lorry before reaching the said junction. The lorry gave a hand signal indicating that he was going to turn right. The first defendant applied his brakes and while the lorry was in the course of turning, he saw the plaintiff's motor cycle flung towards his car and the collision occurred. He was not overtaking any car at that time.

Held, dismissing the plaintiff's claim:

There were material contradictions in the plaintiff's testimony in court and his police report. In the police report he stated that 'saya terbabas dan sebuah kereta' which he explained in court that he applied his brakes but the motor cycle continued moving. In Malay 'terbabas' connotes a change of direction as a result of loss of control. Further, the plaintiff stated in the police report that the lorry came from the opposite direction and not on his side of the road as he alleged in court, and also there was only one lorry. There is also an absence of dragging or scratch marks on the road. The accident occurred in the first defendant's lane and there was a single brake mark directly in front of the off-side tyre of the first defendant's car. The single brake mark must have been from the plaintiff's motor cycle. The first defendant's version was supported by the facts and evidence and the plaintiff had therefore failed to prove his case.

Harcharan Singh for the plaintiff.
DC Alfred for the defendant.

Cur Adv Vult

Lamin J: The plaintiff is claiming for damages as a result of a motor accident which occurred at about the sixth milestone Gambang/Kuantan road on 24 April 1981.

The undisputed facts were that on that day, the plaintiff while on his way home riding his motor cycle from the direction of Kuantan along the Kuantan/Gambang road and on reaching the sixth milestone at the junction of Kuantan/Pekan met with an accident in which his motor cycle collided with a motor car coming from the opposite direction driven by the first defendant. In court, the plaintiff (PW1) gave one version of the incident and the first defendant gave another. According to the plaintiff, when he arrived at the sixth milestone at the Kuantan/Pekan junction, a motor lorry overtook him and then made a turn to the left into the road leading to Pekan without giving any indication to turn left. The plaintiff applied his brakes so that the lorry could pass and then after proceeding for about twenty to thirty feet, he saw two cars in single file coming from the opposite direction, the rear car (driven by the first defendant) was in the process of overtaking the car in front. While overtaking the other car, it encroached into the path of the plaintiff and a collision occurred, dragging the plaintiff and his motor cycle to its (the motor car) side of the road. The plaintiff was thrown off his motor cycle.

On the other hand, according to the first defendant, before reaching the Kuantan/Pekan junction he was following a lorry and then the lorry slowed down and at the same time the driver of the lorry gave a hand signal indicating that he was going to turn to the right into the road leading to Pekan. The first defendant also applied his brakes and when the lorry was in the course of turning to the right, the first defendant saw the plaintiff's motor cycle flung towards the off-side of his car and a collision occurred. He was not overtaking any car at the time as alleged by the plaintiff.

Upon close scrutiny of the plaintiff's testimony, I found material contradictions between his evidence in court and his police report. In his police report which was made four days after the accident he stated that 'satu lorry dari Jalan Gambang masuk ke Jalan Pekan dan saya terbabas dan sebuah kereta Mercedez di depan saya terus langgar saya'. During cross-examination he was asked as to what he meant by 'terbabas'. His answer was that when he applied the brakes, his motor cycle still continued moving. However when it was directly put to him the meaning of 'terbabas' in that he skidded and lost control,